

appears to have been a commingled account whose assets were used by Bennett in an, as yet, unascertained fashion.

The result of these alleged fraudulent activities, finally, was a build-up of cash obligations which Bennett could no longer pay through the sale of new Notes. Bennett's liabilities exceed a billion dollars, and amounts due to unsecured creditors, among which Note holders are currently included, exceed \$800 million. The Employer has filed claims with the insurers whose certificates of insurance were issued to investors in the Notes. However, these insurers have taken the position that such certificates were bogus and that no insurance existed. The bankruptcy trustee has sued the insurers, alleging, among other things, complicity in Bennett's fraudulent scheme.

4. Whatever amount, if any, that the Plan is able to recover with respect to the Notes in litigation or otherwise, it is likely to suffer enormous losses. The Employer proposes, therefore, to make the Plan whole with a Restoration Payment covering the face amount of the Notes and accrued interest as of February 29, 1996, the end of the last month for which interest was credited in respect of the Notes (\$771,715), plus an amount for lost opportunity costs attributable to the Notes (approximately \$21,473, as of September 30, 1996) for the period from February 29, 1996 to the date immediately prior to the date that the Restoration Payment is deposited in the Plan.⁶ The Plan will refund the Restoration Payment to the Employer only to the extent of any amount that the Plan is able to recover from Bennett. The Employer is bearing all expenses of prosecuting the Plan's claims in respect of the Notes, including those relating to Bennett's bankruptcy proceedings, as well as the costs of this exemption application.

Effective as of January 1, 1997, the Plan was converted to a self-directed, individual account plan, administered by The Chase Manhattan Bank. Therefore, the Restoration Payment will be allocated to each participant account in proportion to its allocated share of the net asset value of the entire Plan portfolio. The Employer has requested a ruling from the Internal Revenue

Service that the Restoration Payment does not constitute a "contribution" or other payment that will disqualify the Plan.

5. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(1) The Restoration Payment will enable the Plan to immediately recover the face amount of the Notes and accrued interest as of the date of default, plus lost opportunity costs attributable to the Notes since that date; (2) any Recapture Payments will be restricted solely to the amounts, if any, recovered by the Plan with respect to the Notes in litigation or otherwise; and (3) the Employer must receive a favorable ruling from the Internal Revenue Service that the Restoration Payment does not constitute a "contribution" or other payment that will disqualify the Plan.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery or by first-class mail within 15 days of the date of publication of this notice of pendency in the **Federal Register**. Such notice shall include a copy of this notice of pendency as published in the **Federal Register** and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 3rd day of April, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 97-8973 Filed 4-8-97; 8:45 am]

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

April 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: The Commission postponed until April 23, 1997, oral argument on the following:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 94-74.

⁶The Department notes the applicant's representation that the Plan's lost opportunity costs with respect to the \$771,715 will be calculated based upon an assumed rate of return equal to the interest rate paid on the Plan's money market investments for the period from February 29, 1996 to December 31, 1996, and thereafter, the interest rate paid on money market funds offered by the Plan to participants. (Effective as of January 1, 1997, the Plan permitted participants to direct the investment of their respective individual accounts).

PREVIOUSLY ANNOUNCED TIME AND DATE: 11:15 a.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

CHANGES IN THE MEETING: The Commission postponed until April 23, 1997, oral argument on the following:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 94-74.

PREVIOUSLY ANNOUNCED TIME AND DATE: 2:00 p.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: The Commission postponed until April 23, 1997, oral argument on the following:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 95-267.

PREVIOUSLY ANNOUNCED TIME AND DATE: 3:15 p.m., Thursday, March 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

CHANGES IN THE MEETING: The Commission postponed until April 23, 1997, oral argument on the following:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 94-267.

TIME AND DATE: 10:00 a.m., Thursday, April 10, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor v. Alpha Mining Co. et al*, Docket Nos. KENT 94-1194, etc. (Issues include whether the judge properly vacated citations against individual respondents because the Secretary failed to allege that their possession of smoking items was circumstantial evidence of smoking and whether the judge erred in concluding that an empty cigarette package and a cigarette butt are not "smoking materials" within the meaning of 30 U.S.C. § 877(c).)

TIME AND DATE: 2:00 p.m., Thursday, April 10, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Contractors Sand & Gravel Supply, Inc. v. Secretary of Labor*, Docket No. EAJ 96-3 (Issues include whether the Commission has jurisdiction to review the decision of the administrative law judge issued pursuant to the Equal Access to Justice Act and whether the position of the Secretary was substantially justified in the underlying proceeding.)

TIME AND DATE: 10:00 a.m., Thursday, April 17, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor v. Bluestone Coal Corp.*, Docket Nos. WEVA 93-165-R and 94-117 (Issues include whether the judge correctly determined that the operator did not violate 30 C.F.R. § 77.1600(b) by failing to standardize and post traffic signs warning of a steep downgrade in its haulage road, that the operator violated 30 C.F.R. § 77.1607(c) by failing to ensure that a coal haulage truck was operated at a speed that is prudent and consistent with the conditions of the haulage road and equipment, and that the violation was significant and substantial.)

TIME AND DATE: 2:00 p.m., Thursday, April 17, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor v. Harold Moody, employed by Grand River Quarry, Inc.*, Docket No. CENT 95-214-M (Issues include whether substantial evidence supports the judge's determination that the individual respondent was not liable for his employer's violation of 30 C.F.R. § 56.9300(b).)

TIME AND DATE: 10:00 a.m., Wednesday, April 23, 1997 (Previously scheduled for March 20, 1997).

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 94-74 (Issues include whether the judge's conclusion that the operator's violation of 30 C.F.R. § 75.400's prohibition against accumulations of combustible materials was significant and substantial is legally

correct and supported by substantial evidence and whether the judge's conclusion that the violation was due to the operator's unwarrantable failure is supported by substantial evidence).

TIME AND DATE: 11:15 a.m., Wednesday, April 23, 1997 (Previously scheduled for March 20, 1997).

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 94-74 (See oral argument listing, *supra*, for issues).

TIME AND DATE: 2:00 p.m., Wednesday, April 23, 1997 (Previously scheduled for March 20, 1997).

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 95-267 (Issues include whether the judge was correct in determining that the operator's failure to extend a line curtain within 40 feet of a working face, as required by its ventilation plan, was the result of the operator's unwarrantable failure).

TIME AND DATE: 3:15 p.m., Wednesday, April 23, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor v. Amax Coal Co.*, Docket No. LAKE 95-267 (See oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,
Chief Docket Clerk.

[FR Doc. 97-9223 Filed 4-7-97; 12:52 pm]

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